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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

John M. CARNAHAN, III

Art Unit: 3643

Serial No.: 10/743,380

Examiner: Parsley, D. J.

Filed: December 23, 2003

For: METHOD AND DEVICE FOR DETECTING FISHING CONDITIONS

REPLY BRIEF

This reply is responsive to the Examiner's Answer of February 2, 2006.

In the Answer, the Examiner, for the first time, now contends that claim 7 can be interpreted to mean that the flexible screen can be indirectly attached to the side rails 16 and 18 of Flynn, and with such an interpretation, continues to assert that Flynn anticipates claim 7.

This position is untenable when considering the entirety of clause (b) of claim 7. This clause defines more than just the flexible screen being attached to the side rails; it defines the screen with opposing ends that are attached to the side rails.

In the Examiner's Answer, the best that the Examiner can say is that the bottom of the screen as shown in Figure 1 takes the shape of the side rails 16 and 18. This is not conclusive evidence that the bottom is attached to the rails of 16 and 18. In fact, Figure 1 also shows that a bottom side edge of the upper compartment 54 is parallel to the side rails but unattached thereto. Similarly, the

bottom edge of the lower compartment 56 could also have such a free configuration, and the depiction of the screen 52 in Figure 1 cannot serve as a basis to conclude that the screen is attached to the side rails 16 and 18.

As noted above, the Examiner now contends "With the rails at 12, 14 being directly attached to the side rails – at 16,18 with the flexible screen disposed on the outer surfaces of the rails – at 12, 14, flexible screen – at 52, must be attached to the side rails – 16,18." The problem with this statement is that the claim calls for the opposing ends of the screen to be attached to the claimed side rails, not just the screen. While the Examiner can argue that the screen 52 is ultimately attached to the side rails 16 and 18, the opposing ends of the screen are free and unattached. Therefore, even conceding that if there was claim language that said that the flexible screen is attached to the side rails such would not distinguish over Flynn, the present language that requires opposing ends to be attached to the side rails cannot be inferred from Flynn.

Concerning claim 8, the final rejection stated that "Crane does disclose other ends of the cross members – at 3, 6, are pivotally attached together." Appellant traversed this rejection in the Appeal Brief arguing that member 3 and member 6 are not pivotally connected together.

In the Examiner's Answer, the Examiner now argues a different pivotal connection, i.e., where arm 3 is attached to sleeve 2 and spreaders 6 are attached at 8, which is the spring latch. In fact, the arm 3 and spreader 6 are pivotally connected to the sleeve 2 at its opposing ends. Again, the Examiner

ignores the claim language that it is the other ends of the cross member segments that are pivotally attached together. The end of arm 3 and end of the spreader 6 are not pivotally attached together in Crane.

The mere fact that Crane discloses a mechanism that allows it to fold up does not by itself lead one of skill in the art to modify the cross members of Flynn as alleged in the final rejection. The Examiner's rejection of claim 8 simply lacks the necessary motivation to make the alleged modification of the cross members of Flynn.

For claim 1, the Examiner cites two points to support the rejection of claim 1. First, the Examiner notes that Flynn uses of weights to sink the bottom of the device of Flynn. This sinking does not necessarily mean embedding, it only means that the Flynn device sinks to the bottom of the body of water, and this disclosure does not mean that the step of embedding will occur. Embedding cannot be inherent in this step since it may not always happen.

The reference to Figure 7 to support the contention that the rails 16 and 18 are embedded is also flawed. If anything, Figure 7 shows that the rails, i.e., the claimed support portions, rest on top of the boulders. Claim 1 requires the step of embedding the one or more support portions in a bed underlying the water. Thus and contrary to the Examiner's assertion, laying the rails 16 and 18 on boulders as shown in Figure 7 does not meet the claim limitation at issue, and Flynn does not anticipate the method of claim 1 for this reason.

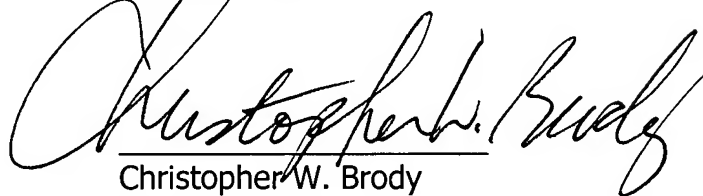
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To summarize, it is contended that the Examiner has failed to establish a *prima facie* case of anticipation against claims 1 and 7, and the Honorable Board of Appeals should reverse the rejection and direct the Examiner to allow all pending claims.

Appellant submits that this Reply Brief is being timely filed and meets the requirements set forth in 37 C.F.R. § 41.47.

Any further necessary extensions of time are requested. Please charge any fee deficiency and credit any excess to Deposit Account 50-1088.

Respectfully submitted,
CLARK & BRODY

A large, stylized handwritten signature in black ink, which appears to read "Christopher W. Brody". The signature is written over a horizontal line.

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